IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.8677 of 2007 and
Crl.Misc. No.33176-M of 2006
Date of Decision:- 21.02.2007

Mukhtiar Singh ....Petitioner(s)

through
Mr.Arun Palli, Advocate

vs.

Karnail Kaur ....Respondent(s)

through
Mr.Gurcharan Singh, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

SURYA KANT, J.

In this petition under Section 482 Cr.P.C., the petitioner seeks quashing of the order dated 2.12.2005 passed by the learned Sub Divisional Judicial Magistrate, Samana whereby an application under Section 125 Cr.P.C. filed by the respondent, has been accepted and the petitioner has been directed to pay maintenance of Rs.600/- per month to the respondent, as well as the order dated 8.4.2006 passed by the learned Additional Sessions Judge (Ad Hoc), Patiala whereby the petitioner's revision petition against the above-mentioned order of the learned Sub Divisional Judicial Magistrate, has also been dismissed.

[2] Unusual and strange are the facts of this case. The respondent (Karnail Kaur) filed a petition under Section 125 Cr.P.C. for the grant of

maintenance *inter alia* alleging that she was married to the petitioner about 16 years back and the parties were residing as husband and wife but no child was born out of the wedlock. She also averred that sufficient dowry articles were given by her parents at the time of marriage. However, the petitioner allegedly started ridiculing her from the last about two years saying that she had become old and not fit for his company and that he will remarry some young woman. It was further alleged that from the last about one year, the petitioner had refused to provide food and shelter to her and had rather thrown her out of the matrimonial home after giving merciless beatings.

[3] The petitioner contested the respondent's claim and took up a specific plea that she is not at all his legally wedded wife. The petitioner further took a categoric stand that the respondent is the legally wedded wife of Nek Singh son of Bakhtour Singh, resident of Village Bahmana and, that she had nine children out of the said wedlock i.e. seven daughters and two sons. The petitioner also pleaded that in fact he was married to Paramjit Kaur, daughter of Chet Singh, and out of the said wedlock, he had four issues i.e. three daughters and one son.

[4] In order to prove that she was the legally wedded wife of the petitioner, the respondent herself stepped into the witness box and also examined Jugraj Singh (AW-2) and Mella Singh son of Harnam Singh (AW-3). No other oral evidence or documentary evidence whatsoever was led by the respondent.

[5] The petitioner, in order to dislodge the respondent's claim, on the other hand, produced and relied upon a series of documents, a brief reference to which is given in the following order:-

(i) Exhibit D-1 is a Ration Card in which the respondent (Karnail Kaur) is mentioned as the wife of Nek Singh. In the Ration Card names of eleven children are mentioned, however, in the photograph appended thereto only 5-6 children are depicted. Karnail Kaur and Nek Singh, however, are duly depicted in the photograph;

(ii) Exhibit D-4 is the form which the family had filled for getting the Ration Card prepared. This form has been duly proved by Tarsem Lal (RW-3) who is an Inspector in the Food and Supplies Department;

(iii) Exhibit RW1/4 is the Voter List in which the respondent Karnail Kaur is described as wife of Nek Singh. The Voter List has been duly proved on record by RW-4 Jagdish Parsad, Kanungo of the Halqa; and

(iv) Oral evidence to the effect that the petitioner was married to Paramjit Kaur and that four children were born out of the said wedlock.

[6] It appears that after both the parties had led their respective evidence and the case was ripe for arguments, the petitioner moved an application to produce additional evidence consisting of the birth certificates, school certificates of the children born out of his wedlock with Paramjit Kaur. The petitioner also moved an application for getting conducted the medical examination of the children allegedly born to the respondent in order to show that none of them was from his loins and to further prove that the respondent was not issueless as claimed by her in the petition for maintenance. The said application was, however, declined by

the trial Court and the petitioner's challenge to the said order before this Court also did not sustain.

[7] The learned trial Court, notwithstanding the fact that the respondent's oral evidence was pitted against the documentary evidence produced by the petitioner, accepted the former's version and granted her maintenance at the rate of Rs.600/- per month from the date of filing of the application.

[8] Aggrieved, the petitioner preferred a revision petition along with an application to lead additional evidence including two documents to substantiate his plea that the respondent was the legally wedded wife of Nek Singh and not of the petitioner. The documents relied upon by the petitioner at the revisional stage were to the following effect:-

(i) AX-1, AX-2, AX-3 affidavits of Nirbhay Singh (Member Panchayat), Balbir Singh (Ex.-Sarpanch) and the petitioner's own affidavit;

(ii) Copies of F.I.R. Nos.5 and 6 registered at Police Station Samana along with final report under Section 173 Cr.P.C., got registered by him against the respondent Karnail Kaur and two witnesses who had allegedly deposed falsely.

[9] The revisional Court, however, did not deem it appropriate to rely upon the said evidence and has rather observed that from the oral evidence led by the respondent, it stood proved that she was the legally wedded wife of the petitioner. As a sequel to the said finding, the revision petition has been dismissed.

[10] This has led the petitioner to invoke the powers of this Court under Section 482 Cr.P.C.

[11] Along with this petition also, the petitioner has appended some more documents which too may be explained in the following tabulated form:-

(i) Annexure P-1, Identity Card of the petitioner issued by the Election Commission of India on 23.5.1995;

(ii) Annexure P-2, Identity Card of Paramjit Kaur, wife of Mukhtiar Singh (petitioner) issued by the Election Commission of India on 23.5.1995.

(iii) Annexure P-3, Ration Card issued on 8.9.2001 by the Food and Supplies Department wherein description of the petitioner, his wife Paramjit Kaur and four children, is given;

(iv) Annexure P-4, a certificate of Backward Class dated 17.2.2006 issued by the Tehsildar, Samana, in favour of Harjit Singh son of Mukhtiar Singh i.e. the petitioner;

(v) Annexure P-5, Middle Standard Result Card-cum-Certificate issued by the Punjab School Education Board on 12.6.2001 in favour of Gurmit Kaur, daughter of Mukhtiar Singh and Paramjit Kaur;

(vi) Annexure P-6, copy of the *Calendra* dated 18.8.1998 in which Smt.Karnail Kaur i.e. the respondent is stated to have described herself to be wife of Nek Singh and which was filed by her against the petitioner;

(vii) Annexure P-7, the order dated 16.2.1999 passed by the Sub Divisional Judicial Magistrate, Samana whereby the above-stated Calendra under Sections 107/151 Cr.P.C. was dismissed after observing that “this case has been made for

harassing the respondent.";

(viii)Annexure P-8, a list of beneficiaries of the old age Pension Scheme of the Government of Punjab of village Bahmana wherein at Sr.No.210, the respondent (Karnail Kaur) is described as wife of Nek Singh and is stated to have been issued PLA No.151637, granting old age pension at the rate of Rs.250/- per month.

[12] Relying upon the three sets of documents, namely, those exhibited before the learned Trial Magistrate, those produced before the revisional Court and the documents which have been appended with this petition, it is vehemently contended by learned counsel for the petitioner that the unimpeachable evidence does prove that the respondent is the legally wedded wife of Nek Singh and has nine children out of the said wedlock. On this premise, it is further contended that plea of the respondent that she is the legally wedded wife of the petitioner or that no child was born out of the said alleged wedlock, is totally false and concocted. A pointed reference to the respondent's own admission purported to have been made by her in the proceedings under Section 107/151 Cr.P.C. which she is claimed to have initiated against the petitioner way-back in the year 1998-1999, is also being made.

[13] Reference to various other documents has also been made in order to contend that the petitioner in fact is legally married to one Paramjit Kaur and has four children out of the said wedlock.

[14] On the other hand, learned counsel for the respondent, at the outset has come up with a preliminary objection with regard to the maintainability of this petition. It is contended that on the pretext of

invoking inherent powers of this Court under Section 482 Cr.P.C., the petitioner has in fact preferred a second revision petition which is not maintainable. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in **Rajan Kumar Machananda** vs. **State of Karnataka** 1990 (Supplementary) SCC 132 and **Jagpati** vs. **State of Madhya Pradesh,** AIR 1993 SC 1360.

[15] On merits, it is argued that the documents sought to be relied upon by the petitioner and which he produced before the revisional Court or before this Court, cannot be looked into for the purpose of determining the respondent's right to claim maintenance under 125Cr.P.C. as these proceedings, in the very nature of things, are summary in nature. It is also argued that the oral version of the respondent and her witnesses having inspired confidence, has been rightly accepted by the Courts below and therefore, no case for interference by this Court in exercise of limited revisional jurisdiction is made out.

[16] After hearing learned counsel for the parties at length and having perused the material on record, I am of the considered view that the object of Section 125 Cr.P.C. to administer social justice so that maintenance can be granted even without giving a conclusive finding regarding existence of the relationship of husband and wife between the parties. In other words, maintenance can be granted even by drawing an inference of such relationship. However, the petitioner in the very first opportunity denied the relationship of husband and wife in no uncertain terms. It was his positive case that the respondent is not married to him but to one Nek Singh and that nine children were born out of the said wedlock. The petitioner has undoubtedly produced some documentary evidence in

support of his above-stated contentions. On the other hand, no documentary evidence whatsoever has been produced by the respondent which may even remotely connect her live-in relationship (what to talk of her being a legally wedded wife) with the petitioner. In the absence of any material on record even to draw inference of any relationship, the findings by the Courts below are liable to be termed as perverse.

[17] In a contest between the oral and documentary evidence, normally the Court would believe the documents as they seldom lie. In any case, it is imperative upon even for a Summary Court also to verify the genuineness of such documents. The petitioner did make an effort by producing Tarsem Lal, Inspector and Jagdish Parshad, Kanungo to establish the genuineness of the Ration Card and the Application Form which depicted the respondent to be wife of Nek Singh as well as the Voters' List to the same effect. Unfortunately, no reason, much less a cogent reason, is traceable in the impugned orders to discard or overlook the said evidence.

[18] True that the petitioner did not act diligently at the initial stage and failed to produce all those documents, a brief reference to which has already been made in this order. However, the ramifications of the *lis* in hand are not confined to the grant of maintenance to the respondent only, rather the declaration which the revisional Court chose to confer upon the respondent that she is legally wedded wife of the petitioner, puts the legal status of the p etitioner's wife (Paramjit Kaur) and their children in dock.

[19] These observations, however, do not mean that the veracity and genuinity of the documents relied upon by the petitioner cannot be dislodged by the respondent by way of oral and/or any other kind of evidence which she may choose to produce. At the same time, it appears

that the matter requires reconsideration by the Courts below. It is for this reason that no final view with regard to genuineness, admissibility or truthfulness of the documents relied upon by the petitioner in this petition, can be formed by this Court.

[20] Consequently, the impugned orders dated 2.12.2005 passed by the learned Sub Divisional Judicial Magistrate, Samana and the order dated 8.4.2006 passed by the learned Additional Sessions Judge (Ad Hoc), Patiala are set aside. The case is remanded to the learned Sub Divisional Judicial Magistrate, Samana, to re-decide the controversy after giving reasonable opportunities to both the parties to lead their respective evidence. The learned Sub Divisional Judicial Magistrate shall make an endeavour to decide the proceedings as early as possible and preferably within one year.

[21] As a measure to achieve social justice and enable the respondent to pursue and contest the proceedings, however, it is directed that the interim maintenance which was granted by the learned Sub Divisional Judicial Magistrate to her shall continue and the petitioner shall be obligated to pay the same till the matter is decided afresh. The learned Sub Divisional Judicial Magistrate shall be at liberty to revise the said interim maintenance, if he deems it appropriate. The amount of arrears of maintenance which the petitioner has deposited with the learned Sub Divisional Judicial Magistrate in terms of the directions issued by this Court is also directed to be released in favour of the respondent.

[22] The parties are directed to appear before the learned Sub Divisional Judicial Magistrate, Samana, on 19.3.2007.

February 21, 2007 **(SURYA KANT)**
poonam **JUDGE**